

§ 784.123

as a practical matter, directly and necessarily a part of such operations. For example, maintenance work performed by members of the fishing crew during the course of the trip on the fishing boat would necessarily be a part of the fishing operation, since the boat itself is as much a fishing instrument as the fishing rods or nets. Similarly, work required on the vessel to keep in good operating condition any equipment used for processing, canning, or packing the named aquatic products at sea is so necessary to the conduct of such operations that it must be considered a part of them and exempt.

§ 784.123 Operations performed on fishing equipment.

On the principle stated in § 784.122 the replacement, repair, mending, or construction of the fisherman's equipment performed at the place of the fishing operation would be exempt. Such activities performed in contemplation of the trip are also within the exemption if the work is so closely related both in point of time and function to the acquisition of the aquatic life that it is really a part of the fishing operation or of "going to * * * work." For example, under appropriate facts, the repair of the nets, or of the vessel, or the building of fish trap frames on the shore immediately prior to the opening of the fishing season would be within the exemption. Activities at the termination of a fishing trip which are similarly related in time and function to the actual conduct of fishing operations or "returning from work" may be within the exemption on like principles. Similarly, the fact that the exemption is intended generally for "offshore" activities does not mean that it may not apply to employment in other activities performed on shore which are so integrated with the conduct of actual fishing operations and functionally so necessary thereto that the employment is, in practical effect, directly and necessarily a part of the fishing operations for which the exemption is intended. In such circumstances the exemption will apply, for example, to an employee employed by a vessel owner to watch the fishing vessel, its equipment, and the catch when it comes to port, checks the mooring lines, operate bilge pumps

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and heating and cooling systems on the vessel, and assist in the loading and unloading of the fishing equipment and the catch. Work of the kinds referred to may be exempt when performed by the fisherman himself or necessary to the conduct of the fishing organization. However, the exemption would not apply to employees of a manufacturer of supplies or to employees of independent shops which repair boats and equipment. (*Dize v. Maddix*, 144 F. 2d 584, affirmed 324 U.S. 697.)

§ 784.124 Going to and returning from work.

The phrase "including the going to and returning from work" relates to the preceding named operations which pertain to the procuring and appropriation of seafood and other forms of aquatic life from nature. The expression obviously includes the time spent by fishermen and others who go to and from the fishing grounds or other locations where the aquatic life is reduced to possession. If going to work requires fishermen to prepare and carry the equipment required for the fishing operation, this would be included within the exemption. In performing such travel the fishermen may be required to row, guide or sail the boat or otherwise assist in its operation. Similarly, if an employee were digging for clams or other shellfish or gathering seaweed on the sand or rocks it might be necessary to drive a truck or other vehicle to reach his destination. Such activities are exempt within the meaning of this language. However, the phrase does not apply to employees who are not employed in the activities involved in the acquisition of aquatic animal or vegetable life, such as those going to or returning from work at processing or refrigerator plants or wholesale establishments.

§ 784.125 Loading and unloading.

The term "loading and unloading" applies to activities connected with the removal of aquatic products from the fishing vessel and their initial movement to markets or processing plants. The term, however, is not without limitation. The statute by its clear language makes these activities exempt only when performed by any employee